



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Number: **200641009**

Release Date: 10/13/06

Date: July 17, 2006

Contact Person:

Identification Number:

Telephone Number:

UIL: 4942.00-00

Employer Identification Number:

Legend:

A =

B =

aa =

bb =

Dear

We have considered your ruling request dated December 21, 2005 requesting a ruling that amounts set aside for a specific project will be treated as a qualifying distribution under section 4942 of the Internal Revenue Code.

Facts

A is an organization that is exempt from federal tax under section 501(c)(3) of the Internal Revenue Code and is a private foundation. B is also an organization described in section 501(c)(3) of the Code, and is a publicly supported organization within the meaning of sections 509(a)(1) and 170(b)(1)(A)(vi). A set aside a \$bb grant to be paid to B. B plans to renovate an historic site and use the grant to finance the construction of a visitor's center on the site.

A pledged a total of \$aa for the visitor center project and is providing funding through a series of set-asides beginning in 2004 because B is dependent on a constant cash flow. A received a favorable ruling from the National Office on the 2004 set-aside and has not planned any additions. A represented that it placed the set-aside of \$bb in a separate investment account and will pay it within 60 months. A has recorded this pledge in its books.

A states that it can fund the project better through a series of set-asides rather than a single grant because construction delays, design changes and difficult negotiations have adversely affected B's project timetable. In addition, A believes that the set-aside grant will continue to

stimulate grants to B from the community at large, which are an essential source of funds for the renovation project.

Ruling Requested

You have requested the following ruling:

The \$bb set aside by A satisfies the requirements of the suitability test under section 4942(g)(2)(B)(i) of the Code and will be treated as a qualifying distribution under section 4942.

Law and Analysis

Section 4942(a) of the Code imposes a tax on the undistributed income of a private foundation which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such day falls within the taxable period).

Section 4942(c) of the Code defines "undistributed income" as the amount by which the distributable amount for such taxable year exceeds the qualifying distributions made before such time out of the distributable amount.

Section 4942(g)(1) of the Code defines "qualifying distribution" as any amount paid to accomplish tax exempt purposes as defined in section 170(c)(2)(B).

Section 170(c)(2)(B) of the Code describes a charitable entity as a corporation, trust or community chest, fund, or foundation that is organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or to foster national or international amateur sports competition or for the prevention or cruelty to children or animals.

Section 4942(g)(2) of the Code states that an amount set aside for a specific project which comes within one or more purposes described in section 170(c)(2)(B) may be treated as a qualifying distribution if it meets the requirements of subparagraph (B).

Section 4942(g)(2)(B)(i) of the Code states that an amount set aside for a specific project will meet the requirements of this section if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary that the amount will be paid for the specific project within five years, and the project is one which can be better accomplished by the set-aside rather than by an immediate payment of funds, (the "suitability test").

Section 53.4942(a)-3(b)(2) of the Foundation and Similar Excise Taxes Regulations states that the suitability test is satisfied if the foundation establishes that the specific project is one in which relatively long-term grants or expenditures must be made in order to assure the continuity of particular charitable projects or program-related investments. The regulation cites, as an example of a suitable project, a plan to fund a specific research program that is of such magnitude as to require an accumulation of funds before beginning the research, even though not all of the details of the program have been finalized.

Under section 53.4942(a)-3(b)(1) and (2) of the regulations, a set-aside may be treated as a qualifying distribution only, if at the time of the set-aside, the private foundation demonstrates

that the set aside amount will actually be paid for the specific project within 60 months from the date of the first set-aside; and the project is one which can be better accomplished by such set-aside than by the immediate payment of funds. A's pledge/grant meets the suitability test described in section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(2) of the regulations. A, an exempt private foundation, set aside \$bb for construction of the visitor's center, a specific project that accomplishes a charitable purpose described in section 170(c)(2)(B). This set-aside will further B's charitable activities by financing the construction of the visitor's center and supporting B's fundraising efforts. The long-term construction project can be accomplished better with a series of set-asides that can accommodate construction delays and design changes rather than a single, immediate payment of funds. A has represented that it will pay the set-aside within 60 months.

Conclusion

Accordingly, based on the foregoing, we rule as follows: The \$bb set aside by A satisfies the suitability test of section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-(3)(b)(2) of the regulations. Therefore, the set-aside of funds will be treated as a qualifying distribution as described in section 4942(g)(2) of the Code and section 53.4942(a)-(3)(b)(2) of the regulations for the taxable year ended December 31, 2005.

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides it may not be used or cited by others as precedent. This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Debra J. Kaweck
Manager, Exempt Organizations
Technical Group 2

Enclosure
Notice 437